

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Employer,

and

UNIVERSITY OF CALIFORNIA STUDENT BODY
PRESIDENTS' COUNCIL,

Student Representative.

Case No. SF-HS-1

PERB Decision No. 253-H

October 27, 1982

Appearances; Ellen Lake, Attorney for University of California
Student Body Presidents' Council; Edward M. Opton, Jr.,
Attorney for the Regents of the University of California.

Before Gluck, Chairperson; Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment
Relations Board (PERB or Board) on exceptions filed by the
University of California Student Body Presidents' Council
(SBPC) to the attached proposed decision denying SBPC's request
that it be permitted to participate in negotiations between the
University of California (University) and the Statewide
University Police Association (SUPA.¹ The administrative
law judge held that University police officers are not "student
service personnel" within the meaning of subsection 3597(a)

SUPA was certified as the exclusive representative of
the University's police bargaining unit on August 17, 1980.

of the Higher Education Employer-Employee Relations Act (HEERA or Act),² and dismissed SBPC's complaint.³

The Board has reviewed the administrative law judge's findings of fact and, finding them free from prejudicial error, adopts them as the findings of the Board. We affirm the hearing officer's conclusions of law consistent with the discussion below.

DISCUSSION

This case is one of first impression. We are asked to determine whether members of the peace officers bargaining unit, represented by SUPA, are "student service personnel"

²HEERA is codified at Government Code section 3560 et seq. All references are to the Government Code unless otherwise indicated.

Subsection 3597(a) states:

Subject to provisions of subdivision (d), in all meeting and conferring between higher education employers and employee organizations representing student service or academic personnel, a student representative shall have the right to be notified in writing by the employer and the employee organizations of the issues under discussion. A student representative shall have the right to be present and comment at reasonable times during meeting and conferring between the employer and such employee organizations.

³In The Regents of the University of California (7/21/81) PERB Order No. Ad-107(a)-H, we held that the Board had authority to entertain alleged violations of subsection 3597(a).

within the meaning of subsection 3597(a). The administrative law judge found that police officers were not "student service personnel" within the meaning of the Act, and denied SPBC's right to participate in negotiations between the University and SUPA.

SBPC excepts to the administrative law judge's proposed decision, urging us to accept its interpretation of subsection 3597 (a) and find that University police officers are "student service personnel" within the meaning of that subsection. The University does not except to the proposed decision, but nevertheless advances its own definition of the term "student service personnel."

It is evident from both the legislative history of the Act and the statute on its face, that section 3597 was enacted so as to grant students participatory rights in those negotiations in which they have a significant interest. It is equally evident, however, that the right afforded students to be represented in negotiations is of a limited nature.

Accordingly, by its terms, subsection 3597 (a) limits student participatory rights to those negotiations involving "student service or academic personnel." Despite this clear limitation, the Legislature, in enacting subsection 3597(a), declined to define the term "student service personnel." Both parties argue, and we agree, that by failing to establish a statutory definition of the term "student service personnel," the Legislature intended that the Board would determine, on

a case by case basis, which employees are "student service personnel" within the meaning of subsection 3597(a).

This finding is consistent with both the legislative history of HEERA and the provisions of the Act itself. Assemblyman Howard Berman, the author of AB 1091, which, as enacted, became HEERA, testified that in the course of explaining the bill before the Legislature, he specifically indicated that subsection 3597(a) was one of those provisions of the Act intentionally reserved to the Board for interpretation on a case by case basis.⁴ He further testified that at no time during the debate surrounding AB 1091 did he or any other legislator attempt to define which specific categories of employees would be considered "student service personnel" within the meaning of subsection 3597(a). Berman's testimony is consistent with the absence of a definition of the

⁴The University, citing California Teachers Association v. San Diego Community College District (1981) 28 Cal.3d 692 [170 Cal.Rptr. 817], argues that certain of Berman's testimony is inadmissible as a matter of law to determine legislative intent. In California Teachers Association, the Supreme Court held that while the personal opinion of the author of a bill as to its meaning is inadmissible to prove legislative intent, a legislator's statements are admissible if they are "a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than an expression of personal opinion." 28 Cal.3d at 700. Thus, the Court found that a message sent by a legislator to the Governor supporting an amendment was inadmissible where the statement did not allude to discussion and events which transpired in the Legislature. In this case, those portions of Assemblyman Berman's testimony which recounted what he or others said at legislative committee hearings and on the floor of the Legislature are admissible and relevant to determining legislative intent with regard to section 3597 of the Act.

term "student service personnel" either in section 3562, which sets forth statutory definitions used throughout HEERA, or in any other provision of the Act.

The University argues that the term "student services" is a term of art which describes an administrative division common to American universities, including the University of California. It presented Dr. Frederick Balderston, an expert on higher education administrative practices, who testified that campus police departments are not generally administered through "student services" units, but through general administrative or business units. Dr. Alice Cox, UC Assistant Vice President for Student Services, as well as several other witnesses for the University, testified that the University of California follows the practices described by Dr. Balderston. Dr. Cox further testified that the University of California Student Services Division contains those functions which are exclusively or primarily designed to benefit students. At all of the University's campuses except Davis, the campus police are under the authority of the Vice Chancellor for Administrative Services.

The University also presented testimony that the University of California budget conforms to a standard national budget scheme recommended by several professional organizations. Under this scheme, "student services" are one of twelve basic budget categories. Police services do not fall within this

category, but are generally budgeted under an "institutional support" category. In addition, the University presented evidence that those functions administered by the student services division are largely funded through student fees, while functions administered under institutional support division are largely funded through general revenues.⁵

The University argues that this evidence taken as a whole establishes that campus police are not a "student service" within the commonly accepted meaning amongst higher education professionals as well as within the University's present administrative and budget structure. In construing the Legislature's intent in enacting subsection 3597 (a), it urges us to define "student services" in conformity with its commonly accepted meaning. Chavez v. Sargent (1959) 52 Cal.2d 162, 203 [339 P.2d 801]; Rich v. State Board of Optometry (1965) 235 Cal.App.2d 591; 604 [45 Cal.Rptr. 512]. Since "student services" has a commonly accepted technical meaning within the University's administrative and budget structure which generally excludes campus police, it maintains that we should

⁵At several of the campuses, the police do receive some direct student funding, largely in the form of recharges for security services at concerts and other events. We find, as did the administrative law judge, that these recharges are de minimus compared to the total size of the police department budget. By so finding, however, we do not imply that in future cases the extent of direct student funding will not be considered a factor in determining whether a class of employees are student services personnel.

find that the Legislature intended to use the term in its technical sense. Handlery v. Franchise Tax Board (1972) 26 Cal.App.3d 970, 981 [103 Cal.Rptr. 465].

SBPC argues that the Board should adopt a two-part test to determine whether employees are student service personnel within the meaning of 3597(a). The threshold question would be whether "the disputed group of employees have some significant connection with students." Based largely upon evidence of police contact with students, SBPC maintains that campus police meet this threshold test. The second part of SBPC's test would require the Board to determine whether students would be sufficiently affected by negotiations to warrant their participation therein. The Board would consider both whether students had an interest in the outcome of negotiations and whether public policy concerns would be served by student participation. For example, SBPC argues that police salary levels directly affect students, since student organizations are required to hire bargaining unit members to provide security at student functions. Moreover, SBPC maintains that students have a direct interest in the type of training officers receive, especially in such sensitive areas as rape prevention and riot control. In addition, SBPC argues that public policy concerns would be served by permitting students to participate in negotiations between SUPA and the University,

since student participation would foster "increased understanding" between students and police.

The administrative law judge found that there was no evidence to support the University's contention that the Legislature intended the term "student service personnel" to have a technical meaning consistent with the various definitions proposed by the University. Rather, he found that the Legislature intended the term "student service personnel" to mean "employees whose principal duties were to serve students." He went on to conclude that if the job classification was included within the student service/student affairs administrative structure, budgeted under the student services category and funded by registration fees or tuition, the employees involved would be found to be student service personnel under subsection 3597(a). If the service was not budgeted from student funds and administered through the student service division, as was the case with campus police, it would then be necessary to look at the nature and degree of contact between employees and students to determine whether or not they were employed primarily to serve students.

Applying this latter test, the administrative law judge found that police were not exclusively or primarily engaged in providing services to students. He concluded that the principal responsibility of the University police was to protect University property. He found that in some facilities,

such as hospitals or laboratories, the police provide almost no service to students, and that many of the duties of University police, such as working with other police departments, protecting visiting dignitaries, and providing bomb disposal services did not involve the delivery of services to students.

We agree with the administrative law judge that the central question in determining whether employees are student service personnel is whether they are primarily engaged in providing services to students.⁶ Thus, we find, consistent with the administrative law judge's decision, that it is necessary to examine the full range of employee duties as well the extent and nature of the contact between bargaining unit members and students so as to ascertain whether they are "student services personnel" within the meaning of the Act. However, we disagree with the emphasis the administrative law judge placed on the significance of the University's budgetary and administrative structure.

⁶We note, in so finding, that our interpretation of subsection 3597(a) is not inconsistent with SBPC's contention that the Board should consider the extent to which student interests are affected by the outcome of negotiations when assessing whether employees are "student service personnel" within the meaning of the Act. We find that our test implicitly takes into account the interests of students in the collective negotiation process, and fully protects that interest. We find no evidence to support SBPC's additional contention that the Legislature intended the Board to consider public policy concerns when determining whether employees are "student service personnel".

It has long been held that courts and administrative agencies, absent contrary evidence, are required to give plain meaning to statutory language. California Teachers Association v. San Diego Community College District, supra.⁷ The University has presented no evidence that the Legislature intended the term "student service personnel" to have a technical meaning. On the contrary, Assemblyman Berman testified that, to his knowledge, at no time during the legislative debate surrounding AB 1091 did he or any other legislator suggest that the term "student services" was to be tied to the University's budget or administrative structure.⁸

Moreover, we find the University's administrative and budget structure does not accurately reflect the extent to which employee duties involve providing services to students. For example, the evidence indicates that police services at UC Davis were transferred from the "business services"

⁷See also Centinella Valley Secondary Teachers Association v. Centinella Valley Unified School District (1974) 37 Cal.App.3d 35 [112 Cal.Rptr. 27]; Waters of Long Valley Creek System (1979) 25 Cal.3d 339 [158 Cal.Rptr. 350]; Longshore v. Ventura County (1979) 25 Cal.3d 30 [127 Cal.Rptr. 706]; People v. Superior Court (Younger) (1976) 16 Cal.3d 30 [127 Cal.Rptr. 122]; People v. Privitera (1976) 55 Cal.App.3d Supp. 39 [128 Cal.Rptr. 151]; Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal.3d 222 [110 Cal.Rptr. 144].

⁸Consistent with the "plain meaning" rule of statutory construction, absent clear evidence of legislative intent to the contrary, a technical meaning should not be given to statutory language. People v. Heffner (1977) 70 Cal.App.3d 643 [139 Cal.Rptr. 45]

administrative division to the "student services" division with no resulting impact on either the duties of employees or their relationship with students. The record fails to demonstrate that the administrative structure at other campuses reflects the nature of employee duties any more accurately than it is reflected by that structure at Davis.

The University's budget structure is also an unreliable indicator of the job duties of a particular class of employees. The evidence indicates that the budget category of certain programs differs from campus to campus, even though identical services are involved. In addition, particular programs may have different funding sources at different campuses. Indeed, as the administrative law judge noted, a particular function may be a "student service" within the University's administrative structure, but not within its budget structure.

Our finding is consistent with the requirement that statutory provisions should be interpreted so as to effectuate the purposes of the Act as a whole. California Teachers Association v. San Diego Community College District (1980) 28 Cal.3d 692 [170 Cal.Rptr.817]; People v. Comingore (1977) 20 Cal.3d 142 [141 Cal.Rptr. 542]; People v. Ruster (1976) 16 Cal.3d 690 [129 Cal.Rptr. 153]; Judson Steel Corp. v. Workers' Compensation Appeals Board (1978) 22 Cal.3d 658, [150 Cal.Rptr 250]. As the administrative law judge noted, HEERA is a labor

relations statute, whose purpose is to promote cooperative labor relations between higher education employers and their employees through the collective bargaining process. Essential to that purpose is the requirement that the Board strike a balance between the competing interests of various parties. That balance could not be effectively struck were we to construe subsection 3597(a) in such a way as to allow the University's own administrative or budgetary structure to be dispositive of the definition of "student service personnel."

Turning to the main issue before us, we find that the administrative law judge was correct in concluding that campus police officers do not have, as their primary responsibility, the servicing of students. In making this finding, we have examined the full range of police duties as well as evidence bearing on the interaction between police officers and students. In particular, we have focused on the extent to which students are the primary recipients of police services, the proportion of police officer time which involves direct police/student contact, and the extent to which police services benefit students in a manner distinct from University employees and members of the public. Applying these factors to the relationship between campus police and students, we find that police officers are not primarily engaged in providing services to students.

The University and SBPC presented conflicting evidence concerning the proportion of time that police officers spend directly interacting with students. In reviewing this evidence, we are convinced that campus police officers spend only a minority of their time directly interacting with students and that, where they do interact with students, student status is irrelevant to the nature of the contact.

The evidence indicates that the amount of police/student contact varies considerably from facility to facility. At the University's hospitals, medical centers, and research facilities, police interaction with students is minimal. William Beale, chief of the Berkeley campus police department, testified that little police/student contact occurs at the Lawrence Livermore and Lawrence Berkeley laboratories, as well as the University of California teaching hospitals at Irvine and Sacramento. He testified that somewhat more contact occurs at the University's Los Angeles, Berkeley, and San Francisco campuses. At the remaining University facilities, there is significantly greater contact between students and police. This testimony was corroborated by Lt. John Anderson, who testified that at the San Francisco campus, 75 percent of police officer time is spent patrolling University facilities, while only 25 percent of police officer time is spent making contact with individuals. Of the 25 percent of police officer time which involves contacts with individuals, only

10-20 percent involves direct interaction with students, as opposed to interaction with members of the community or staff persons. Similarly, at the Davis campus, the evidence indicates that over half of the 42-person police force is assigned to the University of California medical center in Sacramento, where there is insignificant police interaction with students. Moreover, the University presented uncontested evidence that when the Davis campus police department is short-staffed, the medical center takes priority and is always fully patrolled. Other evidence indicates that there is almost no contact between police and students at the University's facilities at Scripps Institute, Camp Elliot, and Soledad.

Moreover, the record demonstrates that at every University facility campus police officers engage in regular activities which involve little or no contact with students. Police officers spend a large proportion of their time engaging in security checks and patrolling University property. In addition, at the San Francisco and Berkeley campuses, officers regularly patrol city streets, providing assistance to municipal police departments. Lt. Anderson testified that officers at the San Francisco campus spend anywhere from 20-30 percent of their time responding to off-campus calls during the evening and night shift. Similarly, at the Berkeley campus, police officers participate in mutual aid programs with the cities of Berkeley and Oakland, as well as Alameda County.

In addition, the Berkeley campus police department has a bomb squad which provides services to several Bay Area cities and counties.

There is no doubt, however, that at several University campuses, there is significant contact between police and students. At the Davis campus, for example, Officers Concolino and Essex testified that anywhere from 25 percent to 60 percent of police contacts with individuals involve students. Similarly, at the San Diego campus, Officer Richard Sanchez testified that at least a majority of direct contacts with individuals were with students. However, while many of the contacts between police officers and individuals involve students at the main University campuses, it is clear that the majority of police officer time is spent patrolling University grounds and protecting University property. William Beale testified that, taking into account the varying degree of police/student interaction from campus to campus, the primary focus of police efforts systemwide is the protection of University property. The evidence from police logs supports the testimony of Chief Beale, demonstrating that the majority of police officer time is spent engaged in activities which do not involve interaction with students.

Moreover, when campus police officers do have contact with individuals, the fact that the person is a student is, in most cases, irrelevant to the nature of the contact. Police officers provide the same services to staff persons and members

of the public that they do to students. This fact is borne out by the evidence from police logs, which indicates that, in many instances, the student or nonstudent status of persons contacted is not noted or is only noted in passing. This evidence is indicative of the fact that police officers provide a generalized service to all persons using University facilities, irrespective of status. While a finding that a particular class of employees provides a qualitatively different type of service to students than to other persons is not crucial to determining whether they are "student service personnel," it is probative of whether employees are primarily engaged in providing a service to students.

In sum, we find that police are not engaged in providing services primarily to students; but, rather, are primarily responsible for the protection of University property and all persons using University facilities, irrespective of status. Where police do have direct interaction with students, the record demonstrates that students are not benefited in a manner distinct from other persons. Therefore, the Board finds that University police officers are not student service employees within the meaning of subsection 3579 (a).⁹

⁹In finding that members of the peace officers bargaining unit are not "student service personnel" within the meaning of the Act, we need not reach the question of how section 3597 would be applied to bargaining units in which some classifications of employees are student service personnel and others are not.

The Board denies SBPC's motion that it be granted attorney fees in this case, since there has been no showing that the University's position in this matter was frivolous. King City Joint Union High School District (3/3/82) PERB Decision No. 197; Unit Determination for the State of California (SEERA) (12/31/80) PERB Decision No. 110c-S.¹⁰

ORDER

Upon the foregoing facts, conclusions of law and the entire record in this matter, it is hereby ORDERED that the charge filed by the Student Body Presidents' Council against the Regents of the University of California is DISMISSED.

Chairperson Gluck and Member Morgenstern concurred.

¹⁰Although these cases were brought under the Educational Employment Relations Act (EERA) and the State Employer-Employee Relations Act (SEERA), we adopt a similar standard for awarding attorney fees in cases brought under HEERA.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



THE REGENTS OF THE UNIVERSITY)	
OF CALIFORNIA,)	
)	
Employer,)	Case No. SF-HS-1
)	
and)	
)	
UNIVERSITY OF CALIFORNIA STUDENT)	PROPOSED DECISION
BODY PRESIDENTS' COUNCIL,)	(2/8/82)
)	
Student Representative.)	
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Appearances; Ellen Lake, Attorney (for University of California Student Body Presidents' Council); Edward M. Opton, Jr., Attorney (for The Regents of the University of California).

Before; James W. Tamm, Administrative Law Judge,

PROCEDURAL HISTORY

On February 6, 1981 the San Francisco Regional Director received a letter from the University of California Student Body Presidents' Council (hereafter SBPC) requesting PERB's assistance in resolving a conflict arising under section 3597(a)¹ of the Higher Education Employer-Employee Relations Act (hereafter HEERA).

¹All references are to the California Government Code unless otherwise specified. Section 3597(a) states:

Subject to provisions of subdivision (d), in all meeting and conferring between higher education employers and employee organizations representing student service

The letter alleged that the University of California systemwide administration had taken the position that student representatives are not entitled to participate in meeting and conferring sessions between the Statewide University Police Association (hereafter SUPA) and the University.² The University took the position at that time that PERB did not have jurisdiction over the matter.

On March 12, 1981 the regional director issued an administrative decision asserting jurisdiction and scheduling the matter for hearing. That decision was appealed to the Board, which then issued a stay of the hearing pending its review of the jurisdictional issue.³ On July 21, 1981 the Board upheld the regional director's assertion of jurisdiction and vacated its stay of the hearing.⁴

or academic personnel, a student representative shall have the right to be notified in writing by the employer and the employee organizations of the issues under discussion. A student representative shall have the right to be present and comment at reasonable times during meeting and conferring between the employer and such employee organization.

²On August 19, 1980 SUPA was certified as exclusive representative for a unit of University peace officers.

³The Regents of the University of California (4/23/81) PERB Order No. Ad-107.

⁴The Regents of the University of California (7/21/81) PERB order No. Ad-107(a)-H.

The hearing commenced August 25, 1981 and the record was submitted for decision on November 13, 1981. SUPA chose not to participate in the hearing and has taken no position regarding this dispute.

FINDINGS OF FACT

The findings of fact will first review the background of this case. It will then discuss the field of student services as a profession. The next several sections will discuss the term "student service personnel" as defined by the administrative structure of the University as well as the budget and funding processes. Then it will review the nature and degree of police interaction with students. Finally, some legislative history will be covered.

Background.

Shortly after SUPA was certified as the exclusive representative of the peace officer unit, representatives of the SBPC met with George Dickenson, the University's coordinator of collective bargaining services. Dickenson informed the SBPC that SUPA had been selected as the bargaining representative for University police and urged SBPC to participate in the upcoming negotiations between SUPA and the University. Uncontested testimony of the SBPC representative is as follows:

Well, we had a general discussion about higher education collective bargaining and some of - a little bit about student

employees, but we mostly talked about student services.

And I asked Mr. Dickenson, "Is there anything that the Student Body President's Council should know? have there been any units already determined? have there been any units already determined? have there been any negotiations scheduled?"

And Mr. Dickenson said, "Oh, why, yes, the SUPA has been recognized and we're going to start negotiations some time and I'm certain the students would be interested and should contact us immediately about it."

He also said, I remember, he said, "The police are certainly a student service and they should certainly be interested, especially at Berkeley."

A few days later Thomas Mannix, the University director of collective bargaining services, wrote to the SBPC regarding an earlier SBPC request for information. Included in this letter was the following:

Now that PERB has certified the Statewide University Police Association (SUPA) as the exclusive representative for a unit of peace officers, the University will be preparing for actual negotiations which will begin sometime during the current fiscal year. The Student Body President's Council may wish to exercise its option to participate in that process. If so, all the more reason why we should meet and talk.

When Allen Daily, the SBPC collective bargaining coordinator, sought to become involved in the upcoming negotiations, Mannix had changed his position stating,

. . . while it was his personal feeling that

students should be involved in the police negotiations according to the way he read that language, he could not speak for the University and the University was in the process of developing a quote, official position.

On January 12, 1981 Mannix wrote to the SBPC regarding the University's "official position" which was as follows:

. . . the University administration has been studying the issue of student participation in meeting and conferring under the Higher Education Employer-Employee Relations Act. To date, the University has only one exclusive representative, the Statewide University Police Association (SUPA). Formal meeting and conferring with this exclusive representative will not begin until the spring of 1981. The Collective Bargaining Services Office does not have any formal information concerning what position the police union might take toward student participation in the upcoming negotiations.

After a careful review of the HEERA language in section 3597-a, in particular, the University administration has decided that the "student service" referred to in HEERA was not intended to extend to the University police force. As a consequence of this decision, it is the University of California's position that students are not entitled to participate in the meet and confer process between the University and SUPA.

I realize that your organization has expressed a different view on this issue. I will be happy to meet with you to discuss this situation at your convenience.

Student Services as a Profession.

Within higher education in the United States there exists a

field of expertise organized to provide services either exclusively or primarily to students. This field is generally referred to by professionals in the field as "student affairs" or "student services." The terms are used interchangeably by those in the field. The function has generally grown from within the jurisdiction of offices of deans of students. Professional positions within this function are usually staffed by individuals with some specialized student personnel training. The funds supporting those services are oftentimes, although not always, derived from student fees or registration fees. Administratively, the student services or student affairs functions are almost always separate from other university functions, both on organization charts and in budget categories.

There are several national associations of university administrators dealing with student services and student affairs issues. The leading association is the National Association of Student Personnel Administrators (NASPA). The National Association of State University and Land Grant Colleges has a special student affairs group, and there also exists a National Association of Admission and Registrar Officers. These associations hold national as well as regional meetings and publish journals dealing with student affairs and student services issues.

Membership in such organizations is generally reflective of

student services and student affairs organization charts. Membership lists commonly include titles such as deans of students; chancellors, vice presidents, and deans of student affairs; deans and directors of student services, directors of student housing, counseling center directors, directors of career planning and placement offices, and deans and directors of student activities. The 21-page NASPA membership list for Region VI (covering all of California, Guam and Hawaii) does not include a single police chief, police administrator or police officer.

Articles appearing in the NASPA journals rarely, if ever, deal with police issues, nor are police issues generally included in regional and national meetings of the organization.

The leading weekly trade newspaper for higher education is "The Chronicle of Higher Education." It includes a classified section of the most up-to-date positions available. The index to the positions available section includes a separate listing for "Student Affairs/Services." None of the positions available listed under that section in the issue introduced into evidence included responsibility over campus police.

One of the more authoritative works regarding student services and student affairs as a profession is a book entitled Pieces of Eight. The book is an articulation of the substantive issues in the field by eight past presidents of NASPA. Police services or police administration are omitted entirely from any discussion of issues of the profession.

The evidence is quite convincing from a number of University witnesses with a great breadth of experience that professionals in the field of student services and student affairs do not consider police administrators or police officers to be colleagues within their field of expertise. Administrative Structure of student Services.

One of the more active participants in the study of administrative processes of universities is Dr. Frederick Balderston who served as co-principal investigator of the Ford Foundation project for research in university administration. That project lasted from 1968 to 1973 and is one of the most comprehensive studies of university administration undertaken. Upon completion of the project, Balderston authored a book entitled Managing Today's University. Chapter 4 of the book deals with the organizational structure of administrative services within universities and reflects the general practices found by the research project. The administrative services of a university as reflected by the study include student services, institutional support services, maintenance and operation of capital plant, auxiliary enterprises, and general administrative and business services.

Student services included functions such as admission procedures, payment of tuition and fees, maintenance of records, resolution of delinquency and discipline problems,

counseling and advising, administration of financial aid, student part-time work where the university is the employer, job placement, housing, physical and mental health, transportation, recreation, and involvement with political and community life.

Law enforcement was not found within student services, but rather was organized within general administrative services, along with other functions such as accounting, budgeting, personnel administration, procurement, contract and grant administration, safety, public relations, and fund raising. Balderston testified he was aware of only one instance (which will be discussed later) where law enforcement was included within the student services administrative structure of any university.

Balderston's uncontested testimony was supported by several other University witnesses, including Dr. Alice Cox, assistant vice president, student academic services, for the University of California. Cox is the chief systemwide officer with responsibility for administration of functions identified on various campuses as student academic services, student services, student affairs, and undergraduate affairs. Cox testified that for a function to be included within the area of student affairs or student services at the University of California, it must be either exclusively or primarily for students. Some functions are organized both within and outside

of the student services administrative structure depending on whether the primary recipient of the service are students. For instance, child care programs may on some campuses be designed as a service for students with children, while on other campuses may be a service to the general University community and even open to the public. Outreach programs such as relations with other schools or student affirmative action programs are sometimes carried under the student services and student affairs administrative structure, and other times not, depending on its focus. One of the more visible examples of inconsistent structure is in the area of inter-collegiate athletics. If the focus is upon serving the students the program might be carried under the student services or student affairs structure. If, however, the University would be so lucky as to have a consistently winning football or basketball team, the athletic director may well report directly to the president and operate the program more as a business under the University administrative budget than as a student service.

Police and The Student Services Administrative Structure.

The organization charts of the campuses of the University of California show that, with the exception of the Davis campus, student affairs and student services are administered separately from the police departments. Student services generally fall within the jurisdiction of vice chancellors for student services or student affairs, while police are generally

within the jurisdiction of vice chancellors of administration or business services.

The Davis campus where the chief of police reports to the vice chancellor for student affairs appears to be unique within higher education in general, as well as within the University of California system. Robert Chason, assistant vice chancellor for student affairs, testified regarding the reasons for that structure:

There was a reorganization at the University in 1969 and at that particular point in time we had a strong administrator, who was head of the student affairs division, and a rather troubled administrator who was then vice president for finance. We also had numerous problems on the campus during that period of time that dealt primarily with difficulties with radical student organizations, and it was decided for all those reasons that the student affairs area would perhaps be an appropriate location for University police.

Budget and Funding Processes.

Chason also testified that, except for the police department, the majority of funds to support the student affairs organization comes from University registration fees and student fees. There are only two minor instances in which University police at Davis receive funds from fees paid by students. The first is funds paid by the Associated Students for police services provided at concerts. The second is a small amount of student funds received to support the University lost-and-found program run by the police department.

The budgetary process at Davis is consistent with that used throughout the University of California system. Separate budget categories are not created by the University, but rather fall within a uniform system developed by the National Association of College and University Business Officers (hereafter NACUBO), the American Institute of Certified public Accountants (hereafter AICPA), and the National Center for Higher Education Management Systems (hereafter NICHEMS) as a result of discussions and deliberations by higher education institutions across the country regarding the particular activities which should be classified within given budget functions.

A report produced jointly by NACUBO, NICHEMS and AICPA lists the following functional expenditure categories: instruction, research, public service, academic support, student services, institutional support, operations and maintenance of plant, scholarships and fellowships, auxiliary enterprises, hospitals, mandatory transfers, and independent operations.

The student services category is identified as follows:

This category includes all funds expended for admission, registrar activities, and activities whose primary purpose is to contribute to students' emotional and physical well-being and to their intellectual, cultural, and social development outside the context of the formal instruction program.

This category is comprised of the following subcategories:

Social and Cultural Development includes expenditures for those activities that have been established to provide for the students' social and cultural development outside the degree curriculum. Activities included in this category are cultural events, student newspapers, intramural athletics, student organizations, etc. Expenditures for the intercollegiate athletics program would be included in this category if it is not operated as an essentially self-supporting operation, in which case it would be reported in the category "Auxiliary Enterprises."

Supplemental Educational Service includes expenditures for those activities established primarily to provide matriculated students with supplemental instruction outside of the normal academic program, i.e., remedial instruction.

Counseling and Career Guidance includes testing centers, placement office, etc. Excluded from this category is informal academic counseling provided by the faculty in relation to course assignments.

Financial Aid Administration includes expenditures for activities established to provide financial aid services and assistance to students. This category does not include expenditures for outright grants to students, which would be included in "Scholarships and Fellowships."

Student Admissions and Records includes expenditures for activities of the student admissions office and the registrar's offices.

Student Health Services includes expenditures for student health services that are operated as a service to the student body rather than as an essentially self-supporting auxiliary enterprise.

Police services are allocated to the institutional support category which is identified as follows:

This category includes all funds expended for activities whose primary purpose is to provide operational support for the day-to-day functioning of the institution, excluding expenditures for physical plant operations. Appropriate allocations of institutional support should be made to auxiliary enterprises, to hospitals, and to any other activities not reported under the heading of "Educational and General" expenditures.

This category is comprised of the following subcategories:

Executive Management includes expenditures for all central executive-level activities concerned with the management of and long-range planning for the entire institution, distinct from any program within the institution. Includes such operations as executive direction (e.g., governing board), planning and programming, and legal operations.

Fiscal Operations includes expenditures for those operations related to fiscal control and investments of the institution. Includes such operations as the accounting office, bursar, internal and external audits, etc.

General Administrative Services includes expenditures for those activities that provide central administrative support to the other activities of the institution. Includes administrative data processing, space management, and employee personnel and records.

This category does not include expenditures for student admissions and the registrar's office, which should be reported as "Student Services."

Logistical Services includes expenditures for activities that provide procurement

services and the orderly movement of support materials for the campus operation. Includes purchasing, transportation, printing, campus security, etc. (Emphasis added.)

Community Relations includes expenditures for activities established to maintain relationships with the general community, alumni, or other constituents and to conduct activities related to development and fund raising.

The University produced several planning and budget documents as well as testimony confirming that as a regular practice separate categories are in fact created for student services, and the police do not fall within that category. Thus, while there is overlap between police and student affairs at the University of California, Davis, in the administrative structure of the University the budgeting of both functions is completely separate.

With one minor exception at U.C.L.A.,⁵ the Davis budgeting practices are consistent with the practices throughout the entire University system. Police are budgeted in the institutional support section of the budget, regardless of their place on the functional organization chart.

Prior to 1978 police were budgeted under operation and maintenance of plant. Then NACUBO, AICPA and NICHEMS

⁵A student escort program operated by the UCLA police is paid for by student funds. The employees of this program are students and are not within the peace officer bargaining unit.

recommended it be changed to institutional support, and the University adopted the change.

Separate budget categories for police and student services are consistent from the inception of the budget through its adoption and into its implementation.

Chancellors, vice presidents and University deans have the authority to transfer funds within the subdivisions of major budget categories. However, to transfer funds from one major category such as student services, to another major category such as institutional services and general expenses, requires approval of the president of the University.

Although it is clear that police and student services are budgeted separately, the process is not as rigid as it may appear. Within each distinct budget category there may be more than one source of funding. A particular budget category may receive money from federal sources, state sources, ticket sales (as in intercollegiate athletics) or registration fees, among others. Registration fees and student fees are largely used to support student services and student affairs budgets. However, this also is not completely consistent.

Although there is a great deal of overlap among the budget categories, funding sources and the administrative structure of the student services/student affairs organization, it is entirely possible for employees to be considered student service personnel under one definition and not under another.

For example, Alice Cox, the chief student affairs administrator, would be considered student service personnel under the administrative structure but not necessarily under the budget definition where she is budgeted under institutional services and general expenses. The employees of the student escort service at UCLA would be considered student service personnel under a funding source test because they are paid out of student funds. They would not be considered student service personnel under an administrative structure test or a budget test. The escort program is administered by the department of community safety-police, which is not included in the student services/student affairs organization and is budgeted under institutional support. Student loan collection is funded by registration fees at UCLA, but is budgeted under general administration. The UCLA band is supported by registration fees but is not in the student services/student affairs budget. Additionally, some programs are budgeted in more than one budget category. The educational opportunity program is funded at least partially by registration fees, yet one component of the program is budgeted under student services, while another component of the program is budgeted under financial aid which is separate from student services.

Furthermore, as mentioned earlier, there are several examples of programs such as child care centers, intercollegiate

athletics, student loan officers and ombud-person programs that were budgeted in different budget categories on different campuses due to differences in the thrust of each program.

Police Interaction with Students at Davis.

Most evidence regarding the specifics of police work on campus dealt with the Davis campus, although there was lesser amounts of evidence regarding Berkeley, San Francisco, San Diego and Santa Cruz.

The police department at the Davis campus is within the student affairs organization. The chief of police reports to the vice chancellor of student affairs. The police department employs 42 sworn police officers. Of the 42, 5 are above the level of sergeant, 11 are sergeants, and 26 are patrol officers.⁶ The department has a contract to provide police services to the Sacramento Medical Center which is a teaching hospital associated with the Davis campus. Four of the eleven sergeants and eleven of the 26 police officers are assigned to the medical center. When the department is short-staffed the medical center takes priority, so the medical center will always be adequately staffed even if it means reducing the staff at the Davis campus.

⁶At the time of the hearing in this case the supervisory status of sergeants had not yet been resolved. On October 20, 1981 they were excluded from the unit as supervisors. Statewide University Police Officers Association (10/20/81) HO-R-93-H.

A "sworn" officer is commissioned as a police officer, meets all of the standards established by the State of California and the University to be a police officer, takes an oath to uphold the Constitution and the laws of the United States, of the State of California and, in the case of the University police officer, the rules and regulations of the Regents. The officer then additionally swears to perform all of those duties faithfully as an employee of the University.

The police officers' jobs consist of initiating police action when necessary, preventing and suppressing crime, enforcement of laws and arresting offenders. It also includes times spent on job training, report writing, public relations work and other miscellaneous duties, such as court appearances and monthly firearm qualifications. Patrol officers also provide assistance to motorists, provide backup services to the Davis city police and transport injured persons, mostly students, to the student health center.

Approximately 18,000 students attend U.C. Davis of which 5,000-6,000 live on campus. The campus community has an approximate mean age between 18-25, generally comes from upper middle-class backgrounds, and is more intellectual than the average community. The department makes efforts to take these community demographics into consideration when hiring new officers. They tend to hire officers who are flexible, interested in using the discretion that's allowed to them,

willing to use resources that are available to them in the community that are not solely involved in the criminal justice system,⁷ and are able to get along with students, among other criteria. The department avoids hiring officers who are rigidly set in their ways.

The department encourages the officers to keep familiar with what's happening on campus through means such as the student newspaper and has on at least one occasion invited a minority student to a police training session in an attempt to expose the officers to minority sensitivities on campus.

Each year there is a "fall staff conference" to which all personnel in the student affairs organization are invited. A few officers have attended on a sporadic basis, however, it is not a regular occurrence for officers to attend in the normal course of their jobs. There is also an annual meeting of top administrators of the student affairs organization run by the vice chancellor for student affairs. The chief of police is the only attendee from the police department. Additionally, on an annual basis there are "student affairs workshops" involving middle managers in the student affairs organization. The

⁷For instance, Officer Concolino testified that on one occasion involving child abuse by a foreign student couple, Concolino got counselors from the International Student Division of the Student Affairs Department and the Yolo County Child Protection services officers to work out a solution.

police are invited to only a very small percentage of those workshops.

The Davis campus itself is divided into three major patrol beats, each including a living area. In the past the department has had an officer assigned to dormitory liaison. However, 2-1/2 years ago the policy was changed so that now each patrol officer is responsible for liaison efforts with the living area within that officer's patrol beat. Each officer is expected to develop rapport with the paid housing official within the dorm complex known as the resident manager. The department finds it is advantageous to have rapport established with someone at the dormitory before any type of crime situation develops, thereby minimizing confusion and time when responding to a call from the dormitory.

Each year officers also try to set up meetings with the resident managers' staff, who are students paid on a part-time basis to be floor managers, and known as resident assistants. Those meetings are informal and vary in length from one hour to an hour-and-a-half, depending on the interest level of those attending.

Officers respond to calls within the living areas on almost a daily basis, there being a large number of false fire alarms which require crime reports. Officers also respond to all requests for ambulances. Most often any contact would be between police and the paid staff of the housing unit. Regular

patrol of the housing units usually consists of driving around the perimeters of the buildings and into the parking lots, and occasionally walking through the lobby areas. Officers are specifically instructed to stay out of the living areas except when responding to specific calls for assistance.

Occasionally the department receives requests from resident directors or resident assistants to come into the dorms and give talks to groups of students on a variety of subjects such as narcotics, the University's alcohol policy, crime prevention, or police work in general. The dormitory talks last from 30 minutes to two hours. The officers explain to students during those talks that the police respect the dormitories as the students' living area, refer to them as the students' "castle" and will stay out of the students' environment as long as there is no call for service.

The officer with the highest number of dormitory talks is Lt. Essex, who gave six talks. Essex is not a member of the bargaining unit. Four bargaining unit members have also given talks this year. It is doubtful those talks totaled more than 20 hours, making it an extremely small percentage of any officer's time expenditure.

The police also have some contact with the Memorial Union and Recreational Services Unit of the student affairs organization. The Memorial Union is one of the major recreation centers on campus. It has the only bowling alley in

the Davis community which attracts a large number of people from the town. There is also an arcade with pinball machines which attracts a large number of juveniles from off campus, so the area is patrolled on a regular basis. Additionally, there is a bar called "The Pub" which gets patrolled usually at least twice per night. There are also two outlying facilities within the Memorial Union and Recreational Services Unit which can be rented for dances and receptions, and which also require some patrol.

Bicycles are used extensively at the Davis campus, and the police department has set up a special enforcement unit known as the bicycle detail. The unit handles all facets of bicycle problems such as registration, statistics and bicycle theft. The unit is staffed by three non-bargaining unit members who are empowered to enforce Vehicle Code sections and laws pertaining to bicycles only. They are not sworn police officers.

Officers on patrol also deal with bicycle problems on a sporadic basis, but the amount of time spent varies considerably. For instance, on some nights during the fall quarter when it gets dark early, patrol officers may spend a significant amount of time checking for bicycle lighting violations, while other times during the year officers spend a very small percentage of time on bicycle violations.

The Davis campus conducts a rape prevention program which includes a tear gas certification program, personal safety

lectures, and self-defense workshops. Hearsay evidence in the form of a memo to Lt. Essex from Ann Gail, a rape prevention program assistant, indicates that the thrust of the program, while open to both staff and students, has served a larger percentage of staff and faculty than students. It is also important to note, however, that the rape prevention program is staffed by personnel who are not within the peace officer bargaining unit.

The department has also established a crime prevention foot patrol officer that, although having some contact with students, is specifically charged with protecting University property.

The police provide security services at campus activities and events including those sponsored by student groups. The student organization has no choice but to utilize the campus police. In all but very small events the security force is a supplement to the normal patrol and would have to be done on an overtime basis. The actual amount paid to the department for police security at student body-sponsored events is an extremely small percentage of both the associated students budget and the police department budget.

Both parties placed great importance on the amount of involvement police have with students. The chief SBPC witness regarding this issue was Officer Nick Concolino, a ten-year veteran of the Davis police force and an active alumnus of

Davis who has served on all three shifts and has worked in almost all assignments available to non-supervisory police officers at Davis. Concolino also has some familiarity with police services on other campuses of the University system through his experience as SUPA chairperson.⁸

Concolino made the following estimates: (1) of bicycle thefts, 85 to 90% of the victims are students; (2) of theft of personal property other than University property, 50% of the victims are students; (3) of physical assaults other than at large gatherings which bring people from outside the normal campus community, students make up 70 to 75% of the victims; (4) of sex crimes, within which Concolino included indecent exposure, students are "predominantly" the victims; (5) of the motorists requesting assistance with their cars or requesting directions, 40 to 50% are students; (6) of the bicycle licenses issued 80 to 90% were issued to students; (7) of parking permits issued 35 to 40% were issued to students; (8) of suicide threats or attempts almost all were students.

Concolino also estimated that 50 to 60% of all police contacts would be with students. However, on cross-examination Concolino admitted that in making this estimate he was including even the most casual contacts such as,

⁸Concolino testified under subpoena and not as an official spokesperson of SUPA. As mentioned earlier, SUPA took no position regarding this dispute.

a quick question about directions or bicycle licensing or assisting someone in a minor manner or a casual conversation or just stopping by and talking to someone you might know or something like that.

Also on cross-examination it became clear that most of Concolino's estimates were limited to the Davis campus and did not take into consideration that 42% of the police officers within the bargaining unit are assigned to the Sacramento Medical Center where there is virtually no contact with students.

The University's chief witness on this issue was Lt. William Essex. Essex is an eight-year veteran of the Davis campus police department and prior to joining the Davis police spent 12 years at the City of Anaheim police force. Essex joined the Davis campus police department as a patrol officer, then was promoted to patrol sergeant and also spent time as a detective sergeant prior to being appointed lieutenant. Essex is currently the administrative lieutenant in charge of planning, training, recruitment and special investigations. At the time of his testimony Essex was also acting chief of police because the chief was then on vacation.

Essex' testimony regarding the amount of time police spent with students and the amount of services rendered to students by the police differed sharply from that of Concolino. Essex estimated that 75% of the police time was spent with faculty, staff and visitors on campus while only 25% might have some

student involvement. Essex further testified that theft of University property was a much greater problem than of student property because of the disproportionate value of University property compared with the students' property. At Essex¹ direction, the department puts a higher priority on larger value thefts than they do on smaller value thefts. Consistent with that thinking, higher priorities are also put on security checks in areas where there is valuable equipment such as laboratories. Lesser priority is given to areas having a higher concentration of students such as dormitories, the library, married student housing complex, intramural athletic fields and the Memorial Union.

Essex also stressed that security checks, whether they be in laboratories or dormitories, are primarily to ensure the security of University property.

The University introduced the Davis campus police logs in support of Essex' testimony. Whenever an officer in the field initiates any police activity or is assigned to a duty, a computer card is stamped with the date and the police dispatcher fills in whatever activity the officer was assigned and adds a brief description of what occurred. At the end of each shift the dispatcher takes the computer cards and types them onto a daily bulletin, creating a running log of all the 24-hour activity. This is done as a regular procedure every day of the year. The log is retained so that the department

can refer to it whenever it needs to locate a case or an incident that occurred. Essex personally reviews the logs to ensure that the logs are kept accurately. Essex has instructed the dispatcher to note if the parties involved were students. A review of the logs indicates that, while student involvement is shown on certain entries, it is not complete and oftentimes student involvement can be gleaned only from an evaluation of the individual facts of each incident report.

The hearing officer's review of the 62 incidents logged on May 1 indicates that, even giving the benefit of doubt towards student involvement, only approximately 26% of them could be confirmed to involve students. This would include incidents specifically identifying a student as either a victim or perpetrator of crimes, incidents involving employees who were also students, and security checks of buildings where students probably would have been. These security checks were counted even though Essex testified the reason for a security check is to ensure the security of University property.

An additional 11% could possibly have involved students but would be speculative. This category included incidents such as helping a motorist on a street adjacent to a dormitory or 1-1/2 blocks from the entrance of the college, under the theory that there would be a higher concentration of students in those areas. Or, the arrest of a non-student for public intoxication in the married student housing complex under the theory that it

was probably reported by a student or a member of the student's family, or an unfounded report at the men's gymnasium because it is frequently used by students.

The remaining 63% were either confirmed as non-students or would have stretched the hearing officer's imagination too far to conclude any student involvement. To count some of these incidents as involving students one would have to conclude for instance that a traffic accident within the City of Davis involved students because of the large number of students in the city, or conclude that a traffic incident in a large residential neighborhood would have involved a student because students live in an apartment complex on the same corner.

Although the police logs are not sufficient by themselves to make a finding regarding the amount of police involvement with students, they do supplement and support the testimony of Essex. Concolino's estimates of police involvement with the students failed to include the police services rendered at the medical center, did include police services performed by non-bargaining unit members, and also included extremely casual contacts such as "a casual conversation or just stopping by and talking to someone you might know." The hearing officer therefore concludes that when there is a conflict in testimony between Essex and Concolino regarding the amount of police services rendered to students, the testimony of Essex will be credited over the testimony of Concolino.

Police Interaction with Students at San Diego and Santa Cruz.

Regarding the San Diego campus, Officer Richard Sanchez, a veteran of seven years on the police force, testified as to his patrol activities both in a patrol car and on foot. Sanchez estimated that when he is out on foot patrol, approximately 60-65% of his contact was with students. It is important to note however, that Sanchez, like Concolino defines "contact" rather loosely to include,

just general conversation or information may be asked of me or I may asked information of people in the area.

Sanchez also made the following estimates:

1. 55-60% of crimes he encountered involved student victims;
2. 80% of medical transportation cases involved students;
3. 55-60% of motorist assist are students;
4. Almost all bicycle registration is for students.
5. Of the time patrol officers spend responding to calls, 60-70% is spent on calls from students, as opposed to other members of the campus community or outsiders; and
6. Approximately 25-30% of the misdemeanors and felonies investigated are committed by students.

The San Diego campus has several facilities. It has facilities at Solidad and Camp Elliot, as well as the University hospital and the Scripps Institute. On

cross-examination, Sanchez qualified his earlier testimony stating his estimates apply only to the main campus. Sanchez also testified that he was a member of the university bomb squad which provides services outside the university.

Sanchez worked at the Santa Cruz campus from 1975 to 1977 and testified that at Santa Cruz the police are even more service oriented towards students than at San Diego. Police officers are asked to pick an area of the campus and then to handle most of the calls and contacts for that area. The officers give out their cards to students and invite student questions or calls.

Police interaction with Students at San Francisco.

Testimony was given regarding the San Francisco campus by Lt. John Anderson, a ten-year veteran of the University police force with past experience as a police officer, sergeant and lieutenant.

The San Francisco campus has 98 buildings on approximately 102 acres. There are approximately 3,700 students, approximately 9,250 staff and faculty, 600 in-patients, and 500 to 1,000 outpatients coming to the hospital on a daily basis.

The department consist of 14 patrolman, 4 sergeants, 1 lieutenant, and the chief as well as 10 civilian employees, totaling 30 employees. Anderson estimated that 75% of the officer's time is spent on preventive patrolling, while 25% is spent reacting to specific situations. Only 10-20% of the

police time and case load goes towards serving students. Anderson further testified that less than 5% of the crimes committed on campus were against students and that not a single student has been arrested since Anderson came to the campus in 1978.

For providing security at student activities last year the police department received funding on a recharge basis of less than \$1,000.00 out of a total police budget of \$963,000.00.

Anderson testified that the campus has the most viable rape prevention program of the nine campuses. The program includes women's self-defense classes, tear-gas classes and rape-prevention sessions. The great majority of those attending are staff such as nurses, secretarial employees and research people as opposed to students. The program is run by a Ph.D. candidate in psychology who is not a member of the bargaining unit. The department also offers a men's self-defense class which has primarily been attended by employees and not students.

Enforcing parking regulations takes a substantial number of hours. However, this rarely involves students as they are not permitted to park on campus.

The department contracts with a private security company to provide an escort service for those on campus. The program escorts about 175-225 persons per night either to parking areas within approximately one mile from campus, to housing if they

live in the area, or to public transportation. Records are kept of who utilizes this service which show that less than 10% of those using the escort service are students.

There are dormitories on campus which are located on the same building complex as the police department. Anderson testified that the department would respond to calls in the dormitory area if they were requested, although he could not recall ever receiving such a call. Police drive through the married student housing area on a regular basis each shift. Specific calls for service are limited to usually 2 or 3 per month.

The department's patrol cars patrol on city streets and at times receive requests from the San Francisco police department for assistance. For instance, the night of the Dan White verdict the San Francisco police department sent the entire Park District Station downtown and the campus police covered the park district for the San Francisco Police Department. There is also a large private medical building adjacent to the campus which includes, among other things, a travel agency, a pharmacy and a Bank of America. The Bank of America has been robbed on two occasions, and the campus police have been the first to respond in both instances. Anderson testified that the department spends 20-30% of evening and night time hours responding to calls off-campus, and assisting the San Francisco Police Department.

The Department also provides a significant amount of money escorts from the several cashiering facilities on campus, such as the dental clinic, two cafeterias, and book store, none of which involves student organization funds.

The campus police also provide services to the Langley-Porter crisis unit, a psychiatric facility for persons either in dire need of commitment or brought in by the police department. Because of proposition 13 and other budget cuts, a number of the community mental health organizations and facilities have closed down, resulting in a tremendous increase in the use of the Langley-Porter facility. Since the facility is not staffed to handle the many restraint cases or the more bizarre behaviour that occurs there, they call the campus police for assistance. The department gets 4 or 5 calls per week which can last from 20 minutes for one officer to an hour and one half for 3 to 4 officers.

The hospital emergency room also generates a great deal of work for the department. The hospital has a well-marked emergency room open 24 hours per day, with easy access. Since it receives and treats a large number of victims of emergency situations such as accident victims, gun-shot victims, etc, and is also an attractive place for persons seeking drugs or narcotics and paraphernalia, the department keeps an officer within a 2-3 minute response at all times.

Because the campus has four pharmacies, there are major

transfers of drugs taking place on a regular basis with a significant amount of misplacement and unexplained disappearances. The department does follow-up investigations and also works with both State and Federal Bureaus of Narcotics Enforcement on risk control and risk management.

The campus has approximately 290 building alarms and the department spends a significant amount of time responding to between 8-20 alarms per day.

Anderson testified that even if all students were eliminated from the campus and the hospital were to continue its present operation, it would not make much difference to police services, and that the department would not be able to reduce the number of police officers.

Police Interaction with Students at Berkeley and Systemwide Coordination of Departments.

Testimony regarding the Berkeley campus, and system wide coordination of police departments was given by William Beale, chief of the Berkeley campus police and coordinator for the systemwide police services. Beale has been in police work for 41 years, starting out as a patrolman, then working his way up the ranks to become chief of police for the City of Berkeley. He spent three years with the FBI and was on assignment to police departments in Oregon and New Hampshire.

Beale testified that the amount of services rendered to students varied depending on a particular facility. He placed

the Lawrence Livermore and Lawrence Berkeley laboratories and the teaching hospitals in Sacramento (affiliated with Davis) and Orange (affiliated with Irvine) in a category where police provide the least amount of services to students. The next category of facilities where police contacts with students would be somewhat greater would include Los Angeles, Berkeley, and San Francisco because of their locations in large metropolitan communities and because they are centers of public activity. The next group includes Santa Barbara, San Diego and Irvine. The category having the greatest degree of contacts between police and students includes Santa Cruz, Davis and Riverside. Beale testified that, in his opinion, even in the last category, the majority of police efforts would be directed towards the protection of the physical plant and University property.

At Berkeley, there are approximately 30,000 students and between 12,000 and 13,000 employees. The department employs 68 sworn police officers. The Berkeley police and other campus police departments are similar to any other police force as far as training, the authority of its officers, recruitment and selection of officers, rights to bear weapons, and criteria for promotions. The University police are required to comply with all federal and state laws regarding arrest procedures, and have the same reporting requirements as other departments. In addition, they have the same access to federal and state law

enforcement resources such as the FBI, the National Crime Information Center or other sources of information, and they are linked into the same communication system as other police forces in the area.

Like many of the other campuses, at Berkeley there is a grant program on rape prevention. At Berkeley, sworn officers within the bargaining unit participate in the program, however, it is run by a coordinator from the environmental health and safety department. Beale testified that the program was an outreach program open to staff, faculty and students as well as community people, with the majority of participants being non-students.

The department also has an outreach self-defense program. The program can vary from 12-16 hours in length, and is staffed by 4 police officers who participate on an on-call basis. The program consists of some basic film information and is then tailored to the needs of the group attending, If it is a young group, the program may stress combative self defense. If it is an older group, it would stress other kinds of self defense, such as the use of mace and whistles. The program was initially designed to serve the campus community and was held during lunch hours, before and after working hours, or at times specifically set aside for that purpose. The program now also reaches out to public schools and community groups, and in some cases, the program is on call around the State. Those

attending the program are more likely to be female than male, and more likely to be staff and community people than students.

The bicycle program at Berkeley includes registration of bicycles, a safety program, prevention of bicycle theft, investigation of bicycle theft, and finally the collection of abandon bicycles. The bicycle safety program is run at the bicycle bureau where people bring their bicycles to register them or to have them inspected for safety purposes. The program is designed to review the rules for the safe use of bicycles. One of the more important bicycle programs regulates the use of bicycles and limits their use to the roadways on campus and prevents their use on pedestrian pathways. The program was developed after instances on the campus of pedestrians being struck by riders of bicycles and being injured seriously, and in a few cases, fatally.

When the police intercept bicycle riders who are riding where they are not supposed to be riding, they are primarily non-students. Beale testified that the students are much more conformative to the regulations than the off-campus community. With regard to the people being protected by the control of bicycle traffic, the major victims are generally older people walking on campus who do not hear the bicycle, are overtaken and struck by the rider. The victims tend to be non-students rather than students.

The Berkeley campus receives many foreign delegations and

and visitors that cause significant security problems. Visitors, such as Prince Charles, the Prime Minister of Canada, and delegations from Russia, Red China, the Philippines and Greece have caused political controversies and have required the equivalent of two to three employee years of service to ensure their safety while on campus.

Like at other campuses the department provides money escorts. At Berkeley, unlike San Francisco, the escorts include student organization funds.

The department provides a number of services which occur off-campus. One is a structured foot patrol service provided jointly by the City of Berkeley and the University police for preventative patrol in the south campus area. The University pairs one of its police officers with a City officer. They work seven days a week, approximately twelve hours per day in the south campus area. The officers do all the law enforcement activity in that area unless they need support, in which case they call in additional people to assist them. The patrol is the primary law enforcement body in the south campus area.

The Berkeley campus police also have a bomb squad which, through written agreement, provides service to the cities of Berkeley, Albany, El Cerrito, Richmond and other areas on call either by the sheriff of the county or the highway patrol. They travel over much of northern California in response to requests for the removal and transportation of hazardous chemicals and explosive materials.

Additionally, there is a mutual aid practice with the cities of Berkeley and Oakland, with the regional parks, and to some extent, with the city of Albany where the university has facilities. The department also provides off-campus support for calls for mutual aid from the Alameda County Sheriff's Office under the Statewide Mutual Aid plan, from the Highway Patrol and the Governor's Office.

Beale testified that the largest category of crimes that occur on the University campus is theft, and that approximately 75% of the thefts involve some form of University loss. According to Beale, the 75% figure held true for both the dollar amount of thefts and the number of thefts.

A sampling of police logs from the Berkeley campus submitted into evidence by SBPC disputes Beale's testimony regarding the number of thefts. The logs covering the first 15 days of March, April May and June of 1981, indicate that approximately 61% of the thefts were against students.⁹ Beale's testimony regarding the number of thefts is therefore discredited. The logs do, however, support Beale's testimony regarding the dollar value of thefts. During the same March to June 1981 period, the reported value of property stolen from

⁹This figure also includes burglary.

students represented less than 5% of the total value of all thefts.¹⁰

The police logs also support Beale's testimony that the majority of police services do not go to students. For instance, the March log indicates that less than 30% of the items logged involved students. Beale's testimony, with the exception of the percentage of student thefts is therefore credited.

Testimony Regarding Legislative History.

Some legislative history was received through testimony of State Assemblyman Howard Berman, author of HEERA. Berman testified that his responsibility as the author of the bill included preparing the bill for introduction, introducing the bill, presenting it to the committees to which the bill was assigned and presenting it to the Assembly. Once the bill passed the Assembly, Berman presented the bill in the Senate committees to which the bill was assigned and selected the Senator to carry the bill on the floor of the Senate on his behalf.

Berman testified he told legislative committees that the bill provided for student participation in the collective

¹⁰Although the value of student thefts exceeded the University losses in 3 of the 4 sample periods, the total student losses were \$25,174 while the University losses were \$509,094.

bargaining process in academic units and in units of employees where the effect of negotiations upon the students would be so significant or sufficiently substantial that the students would have a strong interest in being present and articulating their views. Berman also stated to the committees that, with respect to which unit negotiations students would participate, the PERB should make a determination utilizing the language of HEERA and the whole purpose of student participation.

Berman testified, that he made no statement nor heard any discussions to the effect that the phrase "student service personnel" referred to personnel falling within the student service portion of the university budget or under the student affairs administrative structure of the university. Nor did Berman make statements or hear discussions that those criteria should be ignored.

The University produced the testimony of Lowel Paige, a special assistant to the president of the University for governmental relations. The University also introduced, over the objection of SBPC, several of Paige's reports of legislative activity. The University sought through Paige's testimony and documents to show that there was no overlap between police legislation and student affairs legislation. Upon review, both the testimony and documents are found to be of little probative value and therefore no findings are based upon that evidence.

ISSUES

Do police officers within the peace officer bargaining unit fall within the definition of "student service personnel" and should representatives of SBPC be allowed to participate in meeting and conferring sessions between the University and SUPA pursuant to Government Code section 3597(a)?

DISCUSSION

HEERA was enacted in 1978 following several years of legislative attempts to enact a higher education collective bargaining bill. Bills introduced in 1973 and 1974 provided for student involvement in all negotiations between a board of education, including the University, and the exclusive representative of the employees. There was no limitation on which negotiations were subject to student participation. One bill passed the Legislature but was vetoed by then Governor Reagan. Another died after a number of amendments including one which deleted the student participation provision altogether.¹¹

In contrast to the broad participatory rights granted by earlier bills, some of the bills introduced in the 1975-76 legislative session limited student involvement to academic

¹¹See SB 400 section 13093(e) and AB 3254 section 13974 (e).

personnel or personnel paid for out of student fees or tuition.¹²

The bill which eventually became HEERA, AB 1091, took a different approach. Rather than allowing student representatives into all meet-and-confer sessions or limiting participation to negotiations involving personnel paid with student fees, the Legislature instead allowed student involvement in negotiations of academic and student service personnel.

The SBPC argues that the Legislature intended to grant students access to the meet-and-confer process where the personnel at issue provided services which have a significant impact on students, thereby allowing student representatives to have a voice in the process to protect student interests. The SBPC argues the evidence amply establishes that the University police qualify as student service personnel under that definition.

The University argues that the term "student service personnel" is a term of art in higher education which does not include police, and that student service personnel are separate from police in the budget and funding processes, the

¹²See SB 4 section 3545.8 (a) and AB 3759 section 3545.8(a). See also, SB 275 section 3545.8 which retained the same comprehensive student involvement provisions from the previous session.

administrative structure of the University, and the legislative use of the terms. Furthermore, that even if the SBPC approach is correct, the University should prevail because the evidence shows that police are not primarily provided for students but rather only incidentally made available to students along with a wide spectrum of other general institutional-administrative services that the University provides equally to everyone including its administrators, faculty, staff, students, visitors, and in many cases to the general public.

The SBPC also argues that the University's position has changed repeatedly from "yes" to "maybe" to "no." Following a well-settled principle of labor law that when an employer gives shifting reasons for a discharge, it raises an inference that the discharge was illegal and the employer's stated reasons are pretextual, the SBPC urges the University's position should be rejected.

This is not an unfair practice charge, however, and guilt or unlawful motivation is not at issue. The issue is whether police are student service personnel and the fact that the University changed its position in and of itself has no bearing on the extent to which police provide services to students.

The evidence clearly demonstrates that the term "student service personnel" has a specialized meaning in higher education. The term refers to that field which provides services either exclusively or primarily to students. There

are professional associations and publications to deal with student service issues, professionals within the field oftentimes have specialized training, and there is interaction among professionals in the field, including specialized job markets. Educational institutions set up administrative structures, budget processes and funding sources around the field, and the University of California is no different.

Although student service is a term having special significance at the University in the budget and funding process and the administrative organization, there is no convincing evidence showing that the Legislature had these University practices in mind when it passed HEERA. In fact, if it had these factors in mind it probably would have been confused by the inconsistencies between the three definitions.

This is supported by Assemblyman Berman's testimony that he made no statements nor heard any discussions that the term referred to personnel within the student services portion of the budget or within the student affairs administrative structure of the University.

The special significance of the term of art seems also to have escaped the University's own labor relations experts, Mannix and Dickinson. Had the term referred to such clear-cut guidelines as budget categories or administrative structure, presumably the University's director of collective bargaining services would have known about it. The University in its

brief discounts this by arguing that Mannix' labor relations position would give his opinion on the subject no special weight, that the term "student service personnel" is a technical term and the profession in which it is a technical term is education, not labor relations. The University's argument seems to miss the point that this is a labor relations statute and if anyone should have been aware of any precise guidelines, it should have been the labor relations experts at the University. If the University's own labor relations experts were unaware of the budget, funding source and administrative structure definitions of the term it is unlikely the Legislature would have relied upon these definitions.

It is more likely the Legislature used the term in a broad generic sense to describe employees whose principal duties were to serve students. This is also supported by Berman's statements to the Legislature that students would be allowed to participate in units of employees where the effect of negotiations upon the students would be so significant or sufficiently substantial that students would have a strong interest in being present.

Although it is found that the Legislature did not look to the budget and funding processes or the administrative structure of the University as a definition of "student service personnel," these issues can be looked at as additional

indication of the extent to which the employees in question provide services to students.

If in fact employees are included within the student service/student affairs administrative structure, budgeted under the student services category and funded by registration fees or tuition, the employees would unquestionably be considered student service personnel under section 3597(a). Not because they fall within these categories per se, but because employees within all three of these categories would undoubtedly be employed either exclusively or primarily to serve students.

It is possible, and in many cases probable, that groups of employees may fall within one definition and outside of the others. In this case, the police fall outside of all three definitions. The only notable exception is the police department at Davis which is under the student affairs administrative structure. That exception was created to solve personnel problems in the management ranks and had little if anything to do with the services police provided to students. Even at Davis the contact police officers have with other student affairs functions is minimal.

If, as is the case here, the employees in question are not within the student services/student affairs organization, are not budgeted under student services or funded by student fees, it is then necessary to look at the nature and degree of

contact between the employees and students to determine if in fact they are employed primarily to serve students.

The weight of evidence shows that police are not exclusively or even primarily providing services to students. There was little evidence of any major expenditure of police time and energy directed towards any service exclusively for students.

With the exception of thefts at the Berkeley campus, students do not seem to be the significant victims of crime. Even with thefts, the value of stolen University property far exceeds the value of stolen student property. Because the University police tend to concentrate their efforts on large dollar value thefts, even though students are victims more often, they still are not the primary recipient of police services in this area.

The campus police departments on the whole place service to the University itself and protection of University property on a higher priority than service to students. It is clear that some campuses, such as Santa Cruz, have closer ties between the police and students than do others such as Berkeley or San Francisco (where Lieutenant Anderson testified that even if all students were eliminated the department would not be able to reduce the number of officers). In some facilities, such as hospitals and laboratories, the police provide almost no service to students.

Security checks are a higher priority in areas of high value University property such as laboratories than they are in areas of high student concentration, such as libraries, dormitories and student centers. Police activity at dormitories consists more often of taking crime reports on false fire alarms than of serving students. When police are called to dormitories their primary contact is with the paid housing official. Although a definite service to students, talks given in the dormitories make up an extremely small percentage of the department's time.

The same holds true for escorts of money of student organizations. This service comprises a small percentage of the department's time and is available to and utilized by non-students as well as students.

At Davis, where the bicycle is the primary means of student transportation, the bicycle enforcement program is clearly a service oriented towards students. The program is, however, staffed by non-sworn police officers who are not members of the bargaining unit. Therefore, although they would probably be considered student service personnel, they are not the subject of this hearing.

The same issue arises in the rape prevention programs at Davis, Berkeley and San Francisco, where the programs are run by non-bargaining unit employees. At Berkeley, although police officers do participate in the training, the program itself is

run by the environmental health and safety department. Additionally, in all three programs the major recipients of the program are faculty, staff and outsiders rather than students. The same holds true for the self defense programs where, on the average, the major users are non-students.

The bicycle enforcement program at Berkeley is run by bargaining unit members. Although it does provide service to students, it provides the same service to faculty and staff and the major recipients of the safety program tend to be elderly non-students who get injured by bicycle riders.

The University police also spend large amounts of time on duties having nothing to do with students, such as providing mutual aid to other police departments, providing bomb squads to other jurisdictions and protecting visiting dignitaries.

The SBPC argued it has a direct monetary interest in police bargaining because it pays for security at student functions on a recharge basis. While this is a direct financial link, the amounts involved are miniscule when compared to both the police budgets and the Associated Students budgets.

To conclude that the nature and degree of police contacts with students are sufficient to establish them as student service personnel would create an umbrella large enough to cover almost all University employees, be they gardeners who create a pleasant visual environment for students or stationary engineers who keep the boilers operating to provide heat to

classrooms. An interpretation that broad goes beyond the intent of section 3597(a). It is therefore concluded that employees within the peace officer bargaining unit are not student service personnel. The SBPC does not have the right to participate in meeting and conferring sessions between SUPA and the University. SBPC's request that PERB take action to guarantee SBPC's participation in that process is therefore denied.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on March 1, 1982, unless a party files a timely statement of exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office of the public Employment Relations Board in Sacramento before the close of business (5:00 p.m.) on March 1, 1982, in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305 as amended.

Dated: February 8, 1982

JAMES W. TAMM
Administrative Law Judge

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

THE REGENTS OF THE UNIVERSITY)	
OF CALIFORNIA,)	
)	
Employer,)	Case No. SF-HS-1
)	
and)	
)	
UNIVERSITY OF CALIFORNIA STUDENT)	ORDER RE: EXCLUSION OF
BODY PRESIDENTS' COUNCIL,)	DOCUMENTS
)	
Student Representative.)	
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Documents identified on the record as Documents Nos. 201 through 210, 214 and 215, are to be excluded from the record under section 1040(b)(2) of the Evidence Code.

Testimony of James Odle established that the documents in question were acquired by Mr. Mannix (a public employee) in the course of his duties and not open or officially disclosed to the public prior to the time this claim was made.

Section 1040(b)(2) requires the hearing officer to do a balancing between the interest of the public and the necessity for disclosure in the interest of justice. In this situation the interest of the public is in making collective bargaining work. Both the majority decision and the concurring and dissenting opinion in Colton Joint Unified School District (7/22/81) PERB Order No. Ad-113 cite Berbiglia, Inc. (1977) 233 NLRB 1476, 1495 [98 LRRM 1522] for the proposition that

If collective bargaining is to work the parties must be able to formulate their

positions and devise their strategies without fear of exposure. This necessity is so self-evident as apparently never to have been questioned.

In Colton an employer sought information regarding a union's negotiation strategy session. In the case at hand actual negotiations had not yet started. However, the position the University would take regarding the presence of a third party at the negotiating table would certainly have to be considered a negotiations strategy.

SBPC argues that Colton should not be relied upon because it unlawfully creates a privilege not provided by the Legislature. Montebello Rose Co., Inc. v. Agricultural Labor Relations Board (1981) 119 Cal.App.3d 1. It is important to note, however, that these documents are not being excluded under the Colton decision. They are being excluded under section 1040(b)(2) of the Evidence Code, a privilege established by the Legislature. Colton is being relied upon to help in the balancing test. As Chairman Gluck stated:

It is logical to conclude that the Legislature desired both parties' internal planning processes and preparation for negotiations to be protected from disclosure . . .

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And even as confidentiality is essential to the deliberative processes of the Legislature and the courts so it is to the formulation of the parties' negotiating plans and strategies. . . .

It is therefore concluded that in this case the public interest in allowing a certain degree of confidentiality to a party devising negotiations strategy outweighs the necessity of disclosure in the interest of justice.

Because the documents are excluded under section 1040(b)(2) I make no ruling on the University's claim of attorney-client privilege and attorney work product privilege.

Dated: February 8, 1982

JAMES W. TAMM
Administrative Law Judge

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